IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.W.P. Nos. 103, 107 to 111, 115, 118, 121 to 123, 130, 131, 136, 139 to 154, 158 to 171, 174 to 188, 194, 195, 198, 199, 210, 215, 217 to 221, 233 to 237, 248 to 251, 263, 265 to 267, 279, 280, 292, 296 to 300, 307, 309 and 310 to 329 of 2007.

Date of decision: 14.3.2007

CWP No. 103 of 2007
Indian Educational Society

CWP No. 107 of 2007
Sunrays Public School

CWP No. 108 of 2007
Udan International

CWP No. 109 of 2007
Indira Education Society

CWP No. 110 of 2007
Shiksha Bharti Education Society

CWP No. 111 of 2007
Shailja Shiksha Smiti

CWP No. 115 of 2007
Sarswati Vidya Mandir

CWP No. 118 of 2007
Monal Educational Soceity

CWP No. 121 of 2007
Dev Bhumi Educational Committee

CWP No. 122 of 2007
Sri Naina Devi Temple Trust

CWP No. 123 of 2007
DAV Public School, Gohar

CWP No. 130 of 2007
Paradise Senior Secondary School

CWP No. 131 of 2007
SVN Senior Secondary School

CWP No. 136 of 2007
Himalayan Model School

CWP No. 139 of 2007
R.K.Memorial Education

CWP No. 140 of 2007
Kamla Memorial Public School

CWP No. 141 of 2007
Manavta Sanatan Dharam Education

CWP No. 142 of 2007
Vivekanand Educational Society

CWP No. 143 of 2007
Himalayan Public High School

CWP No. 144 of 2007
Nav Bharti Public School

CWP No. 145 of 2007
Jagriti Public Elementary School Education

CWP No. 146 of 2007
Pandava Public High School

CWP No. 147 of 2007
Adarsh Vidya Mandir

CWP No. 148 of 2007
Bal Bharti Public School

CWP No. 149 of 2007
DAV Public School Dadahu

CWP No. 150 of 2007
Saraswati Vidya Mandir

CWP No. 151 of 2007
Kiran Vidya Niketan

CWP No. 152 of 2007
Him Children Academy

CWP No. 153 of 2007
AKM Public High School

CWP No. 154 of 2007
Adarsh Vidya Niketan

CWP No. 158 of 2007
Prabandh Smiti (SVM, Manali)

CWP No. 159 of 2007
Mile Stone Public Model Education

CWP No. 160 of 2007
SVM Naggar

CWP No. 161 of 2007
Swami Viveka Nand Shiksha Smiti

CWP No. 162 of 2007
Educational Promotional Society

CWP No. 163 of 2007
Swami Viveka Nand Adarsh Vidayalya

CWP No. 164 of 2007
Managing Committee DAV Model School

CWP No. 165 of 2007
SVM Riara

CWP No. 166 of 2007
Himalayan Educational Society

CWP No. 167 of 2007
Shiva Public School Society

CWP No. 168 of 2007
Nikheleshwar Varisht Madhyamik Pathshala

CWP No. 169 of 2007
Bhartiya Educational and Welfare Society

CWP No. 170 of 2007
Sarswati Vidya Mandir, Mohin Gopalpur

CWP No. 171 of 2007
Rural Educational Society, Purba

CWP No. 174 of 2007
Dhauladhar View Public School

CWP No. 175 of 2007
Vanshikha Public School

CWP No. 176 of 2007
Shishu Shiksha Mandir School

CWP No. 177 of 2007
Jagriti Public School

CWP No. 178 of 2007
Munish Model School Society

CWP No. 179 of 2007
Himalayan Educational Society, Jadrangar

CWP No. 180 of 2007
Green Land Educational Committee

CWP No. 181 of 2007
Grameen Shiksha Smiti, Dehra

CWP No. 182 of 2007
Holy Himalayan Public School

CWP No. 183 of 2007
Bishambar Dass Memorial Educational Society

CWP No. 184 of 2007
Prabandh Smiti SVM Pangan

CWP No. 185 of 2007
Unique Public School Smiti

CWP No. 186 of 2007
Prabandh Smiti SVM Kilar

CWP No. 187 of 2007
Him Shiksha Sabha Sarkaghat

CWP No. 188 of 2007
Himalayan Public School, Theog

CWP No. 194 of 2007
Radha Krishan Public Schoo

CWP No. 195 of 2007
SDA Mission, Aani

CWP No. 198 of 2007
Basant Memorial Public School

CWP No. 199 of 2007
Nav Jyoti Adarsh Public High School

CWP No. 210 of 207
Crescent Public School

CWP No. 215 of 2007
Bhagat Chandra Public School

CWP No. 217 of 2007
Trisungam Shiksha Smiti, Riwalsar

CWP No. 218 of 2007
Children Welfare Education Society

CWP No. 219 of 2007
Sai Public Shiksha Smiti Ukhli

CWP No. 220 of 2007
Divya Jyoti Vikas Smit, Bharoli

CWP No 221 of 2007
Educational Society, Sunhi

CWP No. 233 of 2007
Minerva Public School

CWP No. 234 of 2007
Nav Jyoti High School

CWP No. 235 of 2007
Prabandh Smiti, SVM, Melthi

CWP No. 236 of 2007
Prabandh Smiti, SVM, Tikkar

CWP No. 237 of 2007
SVM, Jangla

CWP No. 248 of 2007
Valley Public School, Nerchowk

CWP No. 249 of 2007
Sarswati Public School

CWP No. 250 of 2007
Council of Adventist Educational Institute

CWP No. 251 of 2007
Maa Naina Public School

CWP No. 263 of 2007
B.G. Educational Society

CWP No. 265 of 2007
Satguru Pratap Singh

CWP No. 266 of 2007
Model Institute of Education

CWP No. 267 of 2007
N.Tunga Educational Society

CWP No. 279 of 2007
Himalayan Model School, Kohila

CWP No. 280 of 2007
Adarsh Public High School

CWP No. 292 of 2007
Manav Bharti Public School

CWP No. 296 of 2007
Bal Sudhar Smiti, Chandrot

CWP No. 297 of 2007
Shiva Shiksha Sanstha, Shukar Khud

CWP No. 298 of 2007
Indira Gram Service Society, Kuthera

CWP No. 299 of 2007
Bhawani Shiksha Sansthan, Kalon

CWP No. 300 of 2007
Sarswati Education and Cultural Trust, Lohari

CWP No. 307 of 2007
Guru Ram Saran Public School, Chamba

CWP No. 309 of 2007
The Dawn Public School

CWP No. 310 of 2007
Kuthlerah Shekshink Samaj

CWP No. 311 of 2007
Arjun Dev Education Society

CWP No. 312 of 2007
Indira Gandhi High School

CWP No. 313 of 2007
Vidya Mandir Educational Society Panjalag

CWP No. 314 of 2007
Vishva Bharti Model School

CWP No. 315 of 2007
Modern Blue Star Public School

CWP No. 316 of 2007
Sagar Educational Society, Kharwar

CWP No. 317 of 2007
Mount Everest Educational Society

CWP No. 318 of 2007
St.Meera Educational Trust

CWP No. 319 of 207
Jalpa Public Senior Secondary School

CWP No. 320 of 2007
Gian Jyoti Shiksha Smiti, Bhumti

CWP No. 321 of 2007
Shiwalik Educational Society, Jhakri

CWP No. 322 of 2007
Prem Public Educational Society

CWP No. 323 of 2007
Vyas Public School, Chandpur

CWP No. 324 of 2007
Prabandh Smiti SVM, Kashlog

CWP No. 325 of 2007
Hind Public School

CWP No. 326 of 2007
New Model Public School Education Society, Kakar

CWP No. 327 of 2007
National Public Senior Secondary School

CWP No. 328 of 2007
Lieutenant Narain Memorial Public School

CWP No. 329 of 2007
Baba Kripal Dass Public High School, Parwanoo

Petitioners

Versus

H.P. Board of School Education and another Respondents.

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting?[1]

For the Petitioners: **M/s R.S.Kanwar, Navneet Dhir, Sanjay Dutt Vasudeva, Sanjeev Sharma, Ashok Sharma, S.C.Sharma, Balram Sharma, Ajay Chandel, Vinod Thakur, Vinod Gupta, Ajay Sharma, Neel Kamal Sood, Ankush Dass Sood, Trilok Jamwal, Vijay Bhatia, Tek Chand Sharma, Rajinder Thakur, B.S.Atri, Lalit Sharma, B.M.Chauhan, Bhupender Ahuja, Rakesh Jaswal, Dinesh Thakur, Hamender Chandel, Yudhbir Singh vice M.K.Sharma, Rajiv Rai, Vikram Thakur, Ramakant Sharma, Bhuvnesh Sharma, Ranjana Parmar, G.R.Palsra, Bimal Gupta, Baldev Singh, Neel Kamal Sharma, Rajnish Maniktala, Vinay Thakur, Advocates.**

For the Respondents:Mr.Lovneesh Kanwar, Advocate.

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

Per Deepak Gupta, J.

By this order we propose to dispose of all the aforesaid writ petitions since almost identical questions are involved in these petitions.

All the petitioners before us are either schools or societies who are running schools within the State of Himachal Pradesh. Their applications for grant of affiliation with the H.P.Board of School Education, hereinafter referred to as the Board, were received by the Board after 31st December, 2006 which was the cut off date and the same were not entertained by the Board. The petitioners have filed the writ petitions challenging the said act of the Board and pray that their applications should have been entertained by the Board. It would also be pertinent to mention that in a number of petitions interim directions were issued that the petitioners may submit their applications to the Board on or before a specified date and that the Board would process the applications and final orders would be passed after the decision of the case.

It would be pertinent to mention that one of us (Deepak Gupta, J.) had disposed of CWP No. 92 of 2006 on 25.5.2006 and in the said judgment had given certain directions to the H.P.Board of School Education. The direction

which is relevant for the decision of the aforesaid cases is as follows:-

> "That for the academic session 2007-2008 commencing in April, 2007 and thereafter all applications for affiliation by schools should be invited by the Board by issuing advertisements in the month of November of the year previous to the academic year for which affiliation is sought in leading newspapers being widely circulated in Himachal Pradesh (three English and three Hindi) requiring that the applications for affiliation should be submitted to the Board by 31st December of the year prior to the year for which affiliation is sought that is to say that for the academic year 2007-2008 the applications for affiliation should be submitted to the Board by 31st December, 2006 and no application for affiliation should be entertained thereafter under any circumstances."

In compliance to the aforesaid judgment, the respondent Board amended these regulations and the relevant amended regulation is as follows:

> "16.4.1. Application for affiliation by schools shall be invited by the Board by issuing advertisements in the month of November of the year previous to the academic year for which affiliation is sought in leading news papers being widely circulated in Himachal Pradesh (three English & three Hindi) requiring that the application for affiliation should be submitted to the Board by 31st

December of the session prior to the year for which affiliation is sought and no application for affiliation shall be entertained thereafter. However, the Chairman shall have the power to decide any delay cases on merits."

In the present writ petitions a number of schools had sent their applications for grant of affiliation by post or through courier prior to 31st December, 2006 mostly on 28th December, 29th December and 30th December, 2006. These applications were, however, received by the Board after the cut off date i.e. 31st December, 2006 and all the applications were received by the Board between 2nd January and 4th January, 2007. The Board did not entertain these applications since they had reached the Board after 31st December, 2006. There is another set of cases of persons who had applied by hand on 2nd January, 2007. Even their applications were not entertained. There were some schools and societies which applied for affiliation after 2nd January, 2007 either through post or by hand, but these applications were not entertained. However, the Board has not disputed the averments made in the petition with regard to the dates when the petitioners first went to the Board. The petitioners in CWP Nos. 183, 297 and 321 of 2007 have not applied for affiliation till date.

The main contention of the petitioners is that according to the previous regulations applicable to the Board affiliation was applied for after the academic session had started and they were not aware about the fact that the last date for applying for affiliation for the session 2007-08 was 31st December, 2006. The stand of the Board is that not only has it amended the regulations pursuant to the directions of this court, but had also given wide publicity of the amendment and the last date of submission of applications by issuing public notices in various newspapers, namely, Punjab Kesri, Divya Himachal, Dainik Jagran, Amar Ujala, Dainik Tribune and Daily Tribune on 26th and 27th November, 2006. Thereafter another public notice clearly intimating that the last date for applying for affiliation for the academic session 2007-08 is 31st December, 2006 was again published in Divya Himachal on 10th December, 2006. It is thus clear that seven public notices in various newspapers were issued.

We are of the considered view that persons, who are running schools, are expected to read newspapers and should have been aware about the last date for submitting the applications for grant of affiliation.

The petitioners in CWP Nos. 103, 109, 110, 111, 115, 123, 130, 131, 136, 139, 140, 142, 147, 144, 145,

146, 147, 148, 149, 150, 151, 152, 153, 154, 158, 159, 160, 161, 162, 163, 165, 167, 168, 170, 171, 174, 177, 178, 181, 184, 185, 186, 187, 188, 198, 194, 195, 217, 235, 236, 237, 250, 251, 279, 280, 249, 199, 311, 310, 326, 317, 318, 319, 324, 307, 322, 314, 316, 313, 327 and 217 of 2007 had applied by post between 28th to 30th December, 2006. The petitioners in CWP Nos. 107, 108, 121, 122, 141, 164, 166, 175, 176, 179, 180, 182, 210, 218, 233, 329, 328, 309, 315 and 312 had applied by hand on 2nd January, 2007. We feel that all these petitioners can be bracketed together and form one class. These are the petitioners who had sent their applications either by registered post or through courier and some of them through speed post a few days before the cut off date.

It would also be pertinent to note that 31st December, 2006 was a Sunday and Ist January, 2007 was a holiday on account of Id-ul-Zuha. According to the board it had kept its offices open on 31st December, 2006 and had received as many as 17 applications on that date. All these applications were those which had been submitted in person by the parties.

No doubt the applications in these cases were not received by the cut off date. However, keeping in view the fact that these petitioners had submitted their applications

either through post or courier a couple of days before the cut off date and some of them submitted the applications on the first working day after the cut off date on 2nd January, 2006, we feel that there may be some justification on their part. However, they have also waited till the last date to send their applications. Keeping in view the fact that career of students is involved and the petitioner educational institutions are being run for some length of time, we allow the aforesaid writ petitions and direct that the applications submitted by the petitioners therein pursuant to the interim orders passed by this court shall be considered by the Board in accordance with law. In case these schools comply with all the parameters, they shall be granted affiliation and affiliation shall not be rejected only on the ground that their applications were received late. This is, however, subject to the condition that all these petitioners shall pay Rs.2,000/- each as costs to the respondent Board by bank draft only on or before 31st March, 2007. In those cases in which no interim orders have been passed, the petitioners shall submit their applications on or before 31st March, 2007. These applications shall be submitted by hand to the Board.

The second class of cases is of those persons who have applied to the Board after 2nd January and before

31st January, 2006. These are the petitioners in CWP Nos. 169, 219, 220, 221, 234, 266, 267, 263, 296, 298, 299, 300, 325, 320, 323 and 118 of 2007. For the reasons given above and keeping in view the fact that we propose by order of the court to extend the period for filing the applications for grant of affiliation for the academic year 2007-2008 till 31st March, 2007, we allow these writ petitions also. However, the petitioners in these cases shall pay costs of Rs. 5,000/- each.

The last category of cases relate to those persons who have applied in February, 2006, i.e. petitioners in CWP Nos. 215, 248, 265 and 292 of 2007 or have not applied till filing of the petitions, such as the petitioners in CWP Nos. 183, 297 and 321 of 2007. They shall also be governed by the same order, but subject to the condition that they shall pay costs of Rs. 10,000/- each.

Keeping in view the fact that we have permitted the petitioners to file their applications on or before 31st March, 2007, we feel that it would be inequitable to not grant similar benefit to those institutions/schools which have not approached this court till date. We therefore, direct that if any other school or society which has not even filed any writ petition(s) applies to the Board on or before 31st March, 2007,

their applications shall be entertained subject to payment of Rs.20,000/- as late fees.

The costs/ late fees awarded will be deposited alongwith the applications for grant of affiliation and in those cases where applications have already been filed on or before 31st March, 2007. All the schools shall deposit the costs/ late fees by a demand draft drawn in favour of the H.P. Board of School Education payable at Dharamsala. The costs/ late fees are being imposed because of inaction and negligence on the part of the administrators of the school. We make it absolutely clear that this amount shall not be recovered from the students in any form, whether by enhancement of tuition fee or charging any fund by any name whatsoever. This amount shall be paid by the schools/Societies and not taken into consideration while fixing the fee structure.

The costs/ late fees which we have awarded in these cases will be a huge amount. In our considered view this amount which has accrued to the Board by orders of the court should be used for some good purpose. We, therefore, direct that the Board shall not use this amount for its day-to-day business. The Board is directed to constitute a Corpus out of the entire amount of costs/late fees deposited with the Board. The corpus amount shall be kept in a fixed deposit with

some Nationalized/Co operative Bank. The interest accruing from this corpus shall be utilized for giving scholarships to needy and meritorious students. This corpus should be administered by a trust to be headed by the Chairman of the Board of School Education. In our opinion the trust should have at least six other trustees who should be persons of eminence in the field of academics. The Board is directed to frame a scheme and submit a draft trust deed in this regard within two months. The Board shall submit the said scheme to this court for approval/modification. In this scheme the Board may also make provision for donations from other individuals/institutions which can be utilized for increasing the corpus.

In view of the fact that we have extended the time for filing the application till 31st March, 2007, the Board may complete the procedural formalities of inspection and grant of affiliation by 31st May, 2007. It is also made clear that this general extension is a one time extension which is being granted strictly in view of the fact that this is the first year that the last date for submission of applications for grant of affiliation has been changed to 31st December, of the previous year. We make it clear that in future no such extension shall be

granted en-masse and each case will be considered on its individual merits.

In some of the cases it has been argued that in the regulations displayed in the internet on the website of the Board, the last date of inviting applications is still shown as 30th April, 2006. We direct the Board to ensure that regulations are regularly updated on their website and as far as the latest amended regulations are concerned, the Board shall ensure that by 25th March, 2007 the amended regulations are duly displayed on the website alongwith all proformas of applications, forms, annexures etc.

All the writ petitions are disposed of in the aforesaid terms. All the pending applications in all these writ petitions are also disposed of. A copy of this judgment be placed in the files of all the connected matters. One copy of this judgment duly authenticated by the Court Secretary be handed over to Mr.Lovneesh Kanwar, learned counsel for the respondents-Board by 1.00 p.m. tomorrow (15.3.2007).

(Deepak Gupta), J.

March 14, 2007(K) (Surinder Singh), J.